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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,) Civil No. 08cr3282-LSP
12)
13 Plaintiff,)
14 v.) ORDER DENYING REQUEST FOR
15) CLARIFICATION WITH RESPECT TO
MARICELA LAREDO,) COURT'S NOVEMBER 12, 2008
16) ORDER (DOC. # 26)
17)
18 Defendant.)
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20 On December 3, 2008, Defendant Maricela Laredo ("Defendant")
21 filed a Request for Clarification With Respect To Court's
22 November 12, 2008 Order. On December 8, 2008, the United States of
23 America ("the government") filed an Objection to Defendant's Request
24 for Clarification. The Court, having reviewed Defendant's Request
25 and the government's Objections and GOOD CAUSE APPEARING, HEREBY
26 DENIES Defendant's Request for Clarification.

27 Defendant contends that the Court's November 12, 2008 Order
28 ("Order") fails to address the conduct and time period relevant to
the charged regulation [41 C.F.R. §102-74.390] Defendant asserts
that the conduct and time period is crucial to her defense because
the charged regulation requires that a person voluntarily enter, and

1 be on, federal property. Therefore, that element of the charged
2 regulation can not be satisfied once a person is handcuffed because
3 that person is no longer voluntarily present on federal property.

4 The government argues that the Court has already ruled on
5 Defendant's argument in this regard and that Defendant is asking the
6 Court to make a factual determination based on facts that are not in
7 evidence at this time.

8 The Court's November 12, 2008 Order Addressed Defendant's Arguments

9 a. Voluntariness

10 In the Court's Order discussing Defendant's vagueness
11 challenge to the charged regulation, the Court noted that Defendant
12 argued that she did not voluntarily enter on federal property, but
13 instead, her presence was involuntary and that criminal liability
14 may only attach to Defendant's voluntary entry and presence, which
15 ended at the time she was handcuffed. The Court denied Defendant's
16 vagueness challenge. (Order at 4-6)

17 Here, Defendant contends that the charged regulation, a
18 general intent crime, requires a finding of voluntariness of the
19 proscribed acts. Defendant cites U.S. v. Salazar-Gonzalez 458 F.3d
20 851 (9th Cir. 2006) in support of her argument.

21 In Salazar-Gonzalez, the Court found that proof of being
22 "found in" the United States, a general intent crime in violation of
23 8 U.S.C. § 1326, requires a finding of voluntariness.

24 However, in U.S. v. Salazar-Robles, 207 F.3d 648, 650 (9th
25 Cir. 2000), the defendant therein posited a similar argument that
26 was rejected by the court. In Salazar-Robles, the defendant was
27 found in a state prison and contended that he could not be convicted
28 for the crime of being "found in" a place in which he did not

1 voluntarily put himself. The Ninth Circuit rejected the argument
2 by explaining that "'being found' is an element of the offense; but
3 it is a passive state, not requiring proof of a voluntary act. The
4 voluntary element consisted of (the defendant's) return." U.S. v.
5 Parga-Rosas 238 F.3d 1209, 1214 (9th Cir. 2001)

6 Further, a voluntary act is one in which the individual has
7 the ability to choose his/her course of conduct. The only question
8 is whether the person could have refrained from doing an act or
9 whether he/she was controlled by some irresistible power. If he/she
10 could have refrained, the act is voluntary; but if he/she was
11 impelled by some irresistible force, it is involuntary. U.S. v.
12 Loera 923 F.2d 725, 728 (9th Cir. 1991)

13 From the charging documents, it appears that Defendant
14 voluntarily entered and was on federal property. Even after
15 Defendant was handcuffed, and according to the charges against her,
16 she had the ability to voluntarily choose her course of conduct and
17 could have refrained from acting as alleged. Her alleged acts after
18 being handcuffed are not described as being impelled by an irresist-
19 ible force. Rather, her acts are described as voluntary.

20 Further, Defendant appears to argue that since §1326 is a
21 general intent crime which requires proof of voluntariness, so too
22 does 41 C.F.R. §102-74.390. Defendant argues that the analysis in
23 Salazar-Gonzalez is "directly analogous" to the charged regulation
24 "in that it is a general intent offense that requires... a defendant
25 enter, and be on, federal property." (Request for Clarification at
26 3) Defendant does not cite any authority for this proposition. To
27 the contrary, the cases interpreting the charged regulation (cited
28 in the Court's Order) do not describe or discuss a finding of

1 voluntariness.

2 Moreover, even if the Court were to adopt Defendant's
3 interpretation of the voluntariness and knowledge requirement (which
4 it does not), whether Defendant acted voluntarily during her contact
5 with the officers is a factual issue to be decided at the trial of
6 this matter.

7 Nevertheless, if Defendant wishes to continue to pursue her
8 analysis in this regard, she may contact the Court for a further
9 briefing schedule as to whether all general intent crimes require
10 voluntariness and knowledge, and whether the general intent crime
11 charged requires voluntariness and knowledge.

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13 b. Defendant's Request Requires The Court To Consider Facts
14 That Are Not in Evidence

15 Defendant argues that her acts prior to being handcuffed were
16 voluntary, while her acts after being handcuffed were involuntary.
17 Defendant opposes this argument because the facts required to
18 determine this issue are not in evidence.

19 The Court has already made clear in its Order that the only
20 evidence before it at this time is the sworn Probable Cause
21 Statement. ("P.C. St.") Defendant would have the Court look behind
22 the P.C. St. and make findings regarding the voluntariness of her
23 acts based on the P.C. St. and before the trial on this matter has
24 commenced. The Court declines to do so. The Court has already
25 ruled on the use of the videotape at trial, if the videotape is
26 properly authenticated. The testimony of witnesses and the
27 videotape should provide the Court with all it will need to evaluate
28 and rule on the guilt or innocence of Defendant, including all the

1 issues raised by the parties.

2 Therefore, Defendant's Request for Clarification is DENIED.

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4 DATED: December 23, 2008

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8 Hon. Leo S. Papas
U.S. Magistrate Judge